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No. 87-318

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PRATT & WHITNEY AIRCRAFT DIVISION,
UNITED TECHNOLOGIES CORPORATION,
Petitioner,

v.

CHRISTINE BALDRACCHI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MEMORANDUM OF THE RESPONDENT

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1. The question presented here is whether a state statute—or common law rule—which protects *all* employees in the state from being discharged on certain grounds is preempted by § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 301 ("LMRA"), insofar as the state law applies to employees who are covered by a collective bargaining agreement which provides *contractual* protection against discharges without just cause.

As the petition for certiorari (at pp. 6-7) demonstrates, and as the court below itself acknowledged, the courts of appeals are in disagreement over the proper resolution of this question. Three circuits (the Third,

Tenth and the Second in the decision below) have held that § 301 does not preempt such state-law claims, while two circuits (the Seventh and the Eighth) have reached the contrary conclusion.

We agree with petitioner—and with the court below—that this question is "an 'important' one," Pet. at 6, *quoting* Pet. App. at 1a, which has arisen, and is arising, with great frequency in the lower federal courts and as to which a uniform answer is required.

That being so, we agree that under the standards this Court applies in considering *certiorari* petitions, this case is worthy of the Court's consideration, and that the petition here should be granted.

2. We hasten to add that we believe that the decision below is clearly correct and that the contrary decisions in the circuits are clearly in error; indeed, for the reasons we now develop summary affirmance may well be warranted. In our view the controlling principles have been settled by recent decisions of this Court, and those decisions compel the conclusion that the court below correctly held that suits of the type brought by respondent are not preempted by § 301.

(a) The starting point for analysis is this Court's decision in *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985), which the Court reaffirmed just last Term in *Fort Halifax Packing Co. v. Coyne*, —— U.S. ——, 55 L.W. 4699, 4704-05 (June 1, 1987). *Metropolitan Life* teaches that the LMRA as a whole is not "intended to disturb the myriad state laws . . . that set minimum labor conditions but [are] unrelated in any way to the processes of bargaining or self-organization." 471 U.S. at 756. Rather

> Congress developed the framework for self-organization and collective bargaining of the [LMRA] within the larger body of state law promoting public health and safety. "States possess

> broad authority under their police powers to regulate the employment relationship to protect workers within the State." Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples.
>
> Federal labor law in this sense is interstitial, supplementing it only when it prevents the accomplishment of the purposes of the federal act . . . *When a state law establishes a minimal employment standard not inconsistent with the general legislative goals of the [LMRA], it conflicts with none of the purposes of the Act.* [471 at 756-57; emphasis added]

The instant case involves precisely such a law. Connecticut has chosen to establish a "minimal employment standard" in the form of a state rule which protects Connecticut workers who exercise their right under state law to seek state workers' compensation benefits from being discharged for so doing. That state-law rule applies to *all* workers in the state, whether or not those workers are covered by a collective bargaining agreement which provides contractual protection against such discharges. Such a state-law rule "conflicts with none of the purposes" of the LMRA. To the contrary, as this Court stated in *Metropolitan Life*, in words which the court below correctly recognized are directly applicable here, "It would turn the policy that animated the Wagner Act on its head to understand it to have penalized workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employers." 471 U.S. at 724, *quoted at* Pet. App. at 9a-10a.

(b) The only remaining question is whether employees who exercise their rights under the LMRA to engage in collective bargaining and who secure contractual protections against unjust discharges thereby forfeit their state-law rights otherwise recognized and left intact by

the LMRA. *Allis Chalmers v. Lueck*, 471 U.S. 202 (1985), which the Court reaffirmed last Term both in *Electrical Workers v. Hechler*, —— U.S. ——, 55 L.W. 4694, 4696 & n. 3 (May 26, 1987), and in *Caterpillar Inc. v. Williams*, —— U.S. ——, 55 L.W. 4804, 4806 (June 9, 1987), compel a negative answer to that question.

In *Allis Chalmers*, this Court defined the scope of the preemptive force of § 301, holding that the section preempts state-law causes of action which are "inextricably intertwined with consideration of the terms of the labor contract" or "rooted" in such a contract. 471 U.S. at 213, 220. At the same time, the Court "took care in *Allis Chalmers* to define the precise limits of its holding." *Hechler*, 55 L.W. at 4696 n.3. Thus, *Allis Chalmers* clearly states that § 301 does *not* preempt every claim "tangentially involving a provision of a collective-bargaining agreement[]." *Id.* at 211. In particular, the Court cautioned, § 301 does not preempt "*state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract*"—that is, state rules which "confer[] *nonnegotiable state-law rights on employers or employees* independent of any right established by contract." *Id.* at 212, 213; emphasis added. As the Court subsequently put the point, under *Allis Chalmers* "a plaintiff covered by a collective bargaining agreement is permitted to assert legal rights *independent of* that agreement." *Caterpillar*, 55 L.W. at 4806; emphasis in original.

As we have seen, the instant case involves precisely such an "independent" state-law right enjoyed by all workers in Connecticut. The fact that respondent's union here has secured a just-cause contractual provision which *also* " 'may well prohibit [a] retaliatory discharge,' " Pet. at 18, *quoting Lingle v. Norge Division of Magic Chef, Inc.*, —— F.2d ——, 125 LRRM 2855, 2867 (7th Cir. 1987), and which thus may *parallel* the state-law rule,

in no way changes the fact that respondent is *not* suing on the contract. Rather, respondent is invoking *an entirely separate state statutory right*, one that " 'devolve[s] on [her] as [an] individual worker[], not as [a] member[] of a collective organization.' " *Metropolitan Life*, 471 U.S. at 758. Thus, even if respondent's claim "implicates the same analysis *of the facts* as would an inquiry under the just cause provisions of the agreements,' " Pet. at 13, *quoting Lingle*, 125 LRRM at 2857; emphasis added, it still would not follow, as petitioner contends, that respondent's claim would be preempted by § 301. Rather, under *Allis Chalmers*, respondent is free to invoke state-law rights which exist "independent of any right established by contract." [1]

(c) Finally, it is worthy of note that a closely related issue was raised in *Pan American World Airways v. Puchert*, 472 U.S. 1001 (1985), decided the same Term as *Metropolitan Life* and *Allis Chalmers*. *Pan American* involved an appeal by an employer who argued that the Railway Labor Act preempted a state-law workers compensation retaliatory discharge claim; the employer based that contention on precisely the same considerations that petitioner here asserts in an attempt to justify § 301 preemption. This Court dismissed that appeal for want of a substantial federal question. *Pan American* thus lends further support to the conclusion that the court below correctly concluded that respondent's claim is not

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[1] In this regard, the instant case is analytically no different than a case in which an employee covered by a collective bargaining agreement sues under a state fair employment practices law which proscribes racial or sexual discrimiation. In such a case, the "analysis of the facts" required to determine the merits of the discrimination claim would parallel the factual inquiry required to prove a breach of the just-cause provision of the agreement. *Metropolitan Life* and *Allis Chalmers* leave no room to doubt that the states are permitted to enact and enforce anti-discrimination laws. *Cf. Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974); *Shaw v. Delta Airlines*, 463 U.S. 85 (1983).

preempted by § 301, and that those courts which have reached the contrary conclusion are in error.[2]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the judgment of the court of appeals affirmed.

Respectfully submitted,

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[2] *Cf. Atchison, Topeka & Santa Fe Railway Co. v. Buell*, —— U.S. ——, 55 L.W. 4363, 4364 (March 24, 1987) ("fact that an injury otherwise compensable under the Federal Employers' Liability Act was caused by conduct that may have been subject to arbitration under the RLA does not deprive an employee of his opportunity to bring an FELA action for damages").